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JAMES E. ROSE,
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Briefs.
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Auburn
Ind

55

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See 52 N.E p 797

" 152 Ind 172

Intoxication of a party to a contract renders the contract voidable

4 Ind App 319

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37 Ind 207

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Hale v Mills

Motion to retax costs

Witnesses, subpoenaed but who do not testify cannot have fees taxed, Stat-tee 1927 But 3 witnesses to one fact stat sec 496; and this section applies to impeaching witnesses 1 Dr 136

Kring vs Driggs

Suit on covenant against incumbrances. Vendee may remove incumbrances when. 10 Ind 424; 14 Ind 168; 44 Ind 452.

If a vendee pays off a mortgage he must show that it was paramount to the grantors title. 69 Ind 491 [illegible] 72-186 47-256; 26-88.

Eviction must be by paramount title 6 Blkf 465; 18 Ind 428 top

If complaint does not show paramount title, demurr should be sustained 4 Ind 9 bottom; 5 Blkf 100 - 541 8 Blkf 142;

Measure of damages 20 Ap 182 [illegible]

David F Kain
vs.
St Marks Church

Mechanics Lien

How lien obtained R. S. 6951 5296.
Enforced, 5297, also 6956;
Notice must contain name of owner, when required by statute Phillips on Liens § 345.
Notice need not be addressed to any body Id 344.
also see acts 83 sec. 6953.
If owners are an unincorporated company their names should appear Id. § 346.
If the claim is not due notice should state to when it becomes due. Work Inc. sec. 300. Query. Under present law is it necessary. see Acts of 83 sec. 6956
Amount must be stated. Id 6953.
Notice must be signed Phillips on Liens sec 345

Notice recorded in Miscellaneous Record Acts 83 sec 6954;
Notice is good if not addressed to the owner. It must describe the property. Sec. 6953 bears this construction.

Officers of a church may act as trustees Statute Sec. 3821;
Certificate must be filed Id. Sec. 3823
50 Ind. 223:
I think the usage of the Church may be proven! 50 Ind. 223

Beard vs. Zimmerman.

Partnership

The partnership contract provides that the partnership shall continue at option of Zimmermans

A court of equity will decree a dissolution, when? 1 Par. on Cont 196

But courts of equity will not interfere for slight causes, and perhaps for nothing less than actual fraud. Id.

An assignment, bankruptcy, death, marriage of feme sole partner, Colyer on Partnership p. 105.

One partner may receive pay from the firm for his services if agreed upon 88 Ind 118;

Jennings v. Knisely
Highway

Remonstrance may raise the ? of utility and damages. 86 Ind. 381. middle.

Inclosures. Road cannot be laid through without consent of owner; if other and way can be found Rev. Stat. sec. 5016. 24 Ind. 325; 34 Ind 154;
An objection to the laying the road through an inclosure must be raised by remonstrance 34 Ind. 154; 24-326;
Remonstrance may ask damages for location of road, and declare road not to be of public utility. 50 Ind. 537;
Remonstrance must show that the remonstrator is a free-holder of county or resides along highway 75-376
A Remonstrance on account of pub. utility may be filed after a remonstrance for damages has been rejected on. 72-309;

An appeal bring case de novo before Circuit court, as a civil case, and all questions in issue before the com. must be again tried in Cir. court. 72 Ind 310; 86 57
Remonstrance is an answer 72-310;
Where Rem. is against Pub. Util, and for damages, two issues are presented 72-310;
Remonstrators are defendants and Petrs. plaintiffs. 72-310;
Board of Com. not parties. 72-310;
A. Remonstrance on account of pub. utility may be filed and if viewers report that road is of pub. util, then remonstrator may ask damages. 66-340;
In determining the pub. util. of highway the damages which will have to be paid should be considered. 24-326;
May remonstrate against vacating and ask damages. 75 376 50 Ind. 537.

See page 20

E. C. Kron Gz. vs. Wilson Adm.

Exceptions to final Report.
Decedent loaned J. L. A. Frank $100 note provided payment to decedent during her life, or not to be paid. Note was not paid at her death. Admr. had not but did not collect it. Decedent owed plaintiff claim when she let J. A. have the money. Admr. allowed bill for funeral dinner as per said claim. Decedent conveyed her land to J. L. A. without consideration.
The gift of the $100 was on the condition that she did not need it. A gift prejudicial to existing creditors is void as to them. 1st Burn. last ed & Par. on Cont: 235. Et seq 52 Ind. 398 bottom: 57 Ind. 411, 70 Ind 232 38 Ind. 451, 34 Ind 547;
It was not a gift Inter vivos nor Causa Mortis

See 34 Ind 547; 38 Ind. 451;
A check drawn by the donor and not paid before his death is not a gift because he may revoke it. 21. Am Rep. 568 a / 26 Am. Rep: 577, 27 Am. Rep. 521;
A note payable to decedent with the agreement that it may be paid to his children after his death, Admr. may collect: 75 Ind 258
Petition must give names of owners 34 Ind. 337. "Heirs of A" not sufficient;

Jennings vs. Knisely
Where the remonstrance asks for damages only the remonstrator may open & close 89 - 252
Each Remonstrator may appeal and each may bail the other 90 - 50
Petition need not give width 93 - 220;
A report of viewers need not state that the road is of public utility. 90 - 534

A witness may not testify that a road is of public utility 91 - 150 & 90 - 466.

Witnesses testify as to facts and the Jury estimate the damages. Witness may not say what the damages are 14 A. & E. R. R. 6 182 -

Appeal vacates all judgements 93 Ind. 52;

See Page 42

Rose vs. Schroeder
Petition, Report of Viewers and Order must show width of road - 22 Ind. 201; 58 Ind. 64 82 Ind 124;

Kennedy vs. Brandon

when both parties claim title from one person it is sufficient to place title & in common Service 91 Ind. 42

Livergood vs. Livergood

Condonation of Adultery may be abrogated by subsequent bad conduct of offending party even though the bad conduct may not be adultery 34 Ind. 36

Willis vs. Livergood.
No 1801. D. C. C.

Plaintiffs sue in trespass, charging that defts by force and arms, entered their close and removed timber. One of the plaintiffs prosecutes by next friend.

The person appearing as next friend must consent in writing and file bond. Rev. Stat sec 256. The general issue raises the question of title in plaintiff and the fact of the trespass. 2nd Wat on Trees 464

A license to cut trees must be specially and separately pleaded. 2nd Wat on Trees. 465c; 7 Blkf 105; 1st Chitty 538, 541 & 544; 4 Blkf 286

One may forcably take the possession of his own property 12 Am Rep. 80

A conveyance of standing trees is in law a severance and a conversion of them into personal property, at the time of the delivery of the deed. 20 Am Rep. 125 at 1st Wash. on R.E. p. 9.

The grantee may enter in a reasonable time and remove his trees. 20 Am. Rep. 119.

Where the plaintiff has a license to cut trees, as by a deed, he may enter and remove after time has expired, and as the trees are his own, their value does not constitute a part of the damages. 20 Am. Rep. 119.

A License to cut trees how pleaded. 28 Ind. 254; 58 Ind. 287.

A sale of growing timber to be cut by the vendee, time being given the vendee to

cat. and remove the timber, is a sale of an interest in land. 13 Am Rep. p. 432.

Pike Intork vs. Austin

Replevin of goods alledged to be the property of plaintiffs, as they aver that were bought by the defts. without any intent to pay for them. The defendants were largely indebted when the goods were bought.

If the goods were purchased by the defts without an intention to pay for them the sale is void 27 Am. Rep. 501; 14 Am. Rep. 57;

The insolvency of the defendant at the time of the sale is not sufficient to establish a fraudulent intent on his part 27 Am. Rep. 501;

Plaintiff must return any thing of value he has recieved, or

offer to return. › 53 Ind 359 bottom.

In Re. Kirkpatrick Ditch.

A witness may not give his opinion of damages, benefits or public utility of ditch or road. 92 Ind. 464

Nash Trial vs. Snyder.

The defendant was the agent of the Plaintiffs sold the Plffs. goods and used the proceeds.

Suit to recover.

If deft. has or deed, admitted title in the Plff. he cannot afterwards deny it: Ad. on Torts 2. 557.

Recovery of a Judgement for the goods, transfers the title to the deft. in this ... Ad. on Torts p. 544,

Some act must be done to constitute a conversion; and a converting into money by sale is within the definition 23 Ind. 311;

No demand is necessary when there has been conversion 23 Ind. 311; 27 Ind. 426; 57 Ind. 239;

A. Demand is unnecessary when the complaint alleges a conversion 66 Ind. 576; 5 Blkf. 14; 17 Ind. 84; 12 Ind. 273; 23 Ind 311; 59 Ind 489; 5 Ind. 247; 85 Ind. 250; 92 Ind. 1; Ad. on Torts p. 556 Sec. 535;

To render a factor liable for conversion of goods demand must be made while property is in his hands 24 Am. 360 20 Wend. 268;

The measure of damages is the value of the property including any labor put on it by defendant. 33 Ind. 127; and the defendant cannot prove the value of his own labor bestowed on the property to lessen damages Id.

In a suit for conversion a variance in description may be amended at the trial. 85 Ind. 248;

See page 38

Kagenstum vs. w. Long.

Defendant bought clover huller of plaintiff, and gave conditional note, for the huller. The defendant then mortgaged the machine. Note became due, defendant did not pay and Pltfs. agent demanded possession of the machine, Defl refused to give it up, and suit brought for the machine.

Bradshaw vs. Warner et al 54 Ind. 58. is a case in point. Appellee sold safe to Wolf. Constable levied on safe as Wolfs property. Appellant bought at constables sale. Appellee replevied and held safe.

See Also to same point 28 Ind. 225; 12 Ind. 322; (steer case) See also 51 Ind. 311, where a conditional sale of a horse, was made.

Also see Hadlow

vs Warner et al. 60 Ind. 214, where appellee recovered a safe from appellant, who had bought it without notice of the lien from Appellee Vendee.

Clark v Snyder

Exercising dominion over the property is a conversion and not the evidence of it 89 Ind. 240 Addison on Torts Vol 1 P 556;

When chattels come lawfully into into the possession of defendant and there was no trespass in taking them, and deft. fails to deliver them, after demand, the declaration &c. is for conversion Addison on Torts p. 556. Sec. 525;

Plea not guilty what does it cover Ad. on Torts p. 542 Sec. 538

Plea of Justification Ad. on T. Sec 531;

What the plaintiff must prove Addison on Torts p. 554;

The defendant cannot set up any right in the

property unless he has pleaded it. Addison on Torts p. 557;

When two commit trespass both liable Counts 92 - 2

No protection to either trespasser against the other 89 Ind 400

Conversion into money by sale is a conversion 29 Ind 311 & note, and citations.

Conversion by firm Holl on P. Sec. 468, 2 748

Exclusive control and the exclusion of pltff in conversion 89 Ind. 240

Plaintiff must prove his authority when he to make valid sale 61-246

Selling another pers. does not prove title 53 Ind 519

Deft. cannot deliver no demand need be proved. 14-541 12-273

From 14th Page

Viewing no. Entirely
The board of Commissioners
have no power to set aside a Jud.
on account of fraud. 61 Ind. 75;

The report of the viewers must
be acted on. 74 Ind. 221;
and hear the same within
6 ds. can as the verdict of
a jury does to a court in civil cases.
The Commissioners must pass
judgement on the report of the
viewers. 74 Ind. p. 227 below middle.
Public Utility does not mean
public necessity but public
convenience 86 Ind 68.
Petition must name owners of land
through which road runs. 34 Ind 337,
"Heirs of" not sufficient Id. Initials not
sufficient 55 Ind 278, 71 Ind 524.
A motion in arrest should be
sustained if land owners are
named by initial 55 Ind 278.
In a complaint to enjoin it

should be stated that no one
had notice 29 N.E. 567,
A remonstrance not allowed to be
filed in circuit Court 30 N.E 705
Viewers report need not show
that road is of Pub. U. 31 N.E 457
The width of the road must be set out
in the order of the Board 34 N.E 503
If a road has been laid out and
damages awarded, but road not opened,
damages may be awarded on a second
proceeding to lay out road 35 N.E 1111
If a sufficient number of agrees have
not petitioned, the question should be raised
by remonstrance 38 N.E. 416
Commissioners may allow names added
before their jurisdiction has been determined
38 N.E 416
Two reviewers may act 38 N.E 416

Buss. of Estate: Exceptions to final report:

The admr. is the plaintiff. 91-252; 64-311; 37-284

The final report is not a complaint 87-497.
Final report is not subject to a demurr 87-497.
In such case the rules of pleading are not applicable. 87-501

In case of objections to report either party may have a jury 37-290 but under sec. 7114 (83) no jury is allowed 93 Ind 123;

Administrator not allowed attorneys fees for services done by himself 93-121;

State vs Koons
Oath must pertain to a material matter. State vs Reynolds 108 Ind. 353 9 N.E. 287; State vs Cunningham 116-209; 18 N.E. 61; State Burns Sec 2094
To a good indictment see Sec Burk vs State 81 Ind 132;
What constitutes materiality Smith vs State 25 N.E 598; 125-444

Two modes of pleading materiality State vs Anderson 103 Ind. 170; S.C. 2 N.E. 332.

The statements in the oath must be specifically negatived. 2 Bish. Crim. Proced. Sec 861

Perjury before Grand Jury.
State vs McCormick 52 Ind 169

Ashelman vs. Ashelman

Wife may make will but cannot
divest husband of 1/3
48 Ind 417
94 " 510

Trentman vs. Myers
Suit on account & attachment.

Exemption must be plead as an answer, 7 Ind. 447; 13 Ind. 53; 10 Ind. 327; 10 Ind 200; 16 Ind. 158; and it cannot be claimed after trial. 15 Ind. 8; 29 Ind. 507;

Grosscop. vs. Rainier et al.
Not necessary to prove in circuit Ct. that remonstrators were voters 100 Ind. 27

Baughan vs Baughan
Rew may a hab. q. pleas
53 Del. : 466
57 " 500

Nelson v. Briggs.
Deft. was wife of Ross - filed compl^t for divorce - divorce granted but was never entered in Record.
Deft afterwards married J. B. Nelson who died owning land - Deft had land set off to her as widow - and afterwards had married pro tunc entry of divorce made - complt: avers fraud on part of deft. The nunc pro tunc entry does not make previous marriage good
17 Pacific Rep. 932
10 N. E. Reps 749
Actions for relief against frauds may be commenced within 6 years Rev Stat sec. 292.
Statute of Limitations does not run against frauds 4 Blkf. 81 a
In cases of fraud the Statute does not run until the fraud is discovered. 15 Ind 130 12 N.E. 632
Per. contra 30 Ind 202 25 2576

Fraud vitiates a judgement - Freeman on Judgements sec. 99.
Mc Quigg v Mc Quigg 13 Ind 294 ad
An action to have a deed declared a mortgage comes within the 4th clause of sec. 293. 66 Ind 383

Statute of Limitations must be pleaded 25 Ind 125

Blodgett vs Richwood

Land described as 1 a. 1/4 C. was sold for taxes of $1-78 on Feb. 17, 99 for $1.99 to Arnold Blodgett.

Deed made Jan 21 95, recorded on Jan. 21 1895; Blodgett paid taxes April 8 85 $ 5.69; Jan. 26, 86 $ 5.89, Jan. 26, 87 $ 4.96; Mch 26/87 $ 2.80 Feb 1/88 3.74

Land entered by Henry Blodgett Aug 3/53
Perry deeded to Elizabeth Blodgett Sept. 15/53
A.A. p. 28
Eliz. deed right of way Sept 19/53. L. 584
Eliz. willed to Nancy Blodget May 19/74
Will Rec. 1 p. 514, Probated Jan. 1 '75
Sheriff deeded to J.J. Kinney (as Perry & Nancy Blodget July 27/82 see J.J. p. 252,
J.J. Kinney deeded to A Tomlinson May 17, 90 Rec. M.M. p 219
Blodget deed complaint Oct. 15 99
Recitals in deed are prima facie proof of facts recited. Dewitt Dial 123
Burns Dial 3rd not rec. 8624.
If deed insufficient to convey title, it may yet be declared

a lien on the land Burns Mod 8632.
Reed vs. Earhart 88 Ind 159,
The Statute of limitations does not bar this suit - 16 N.E. 153, 114 Ind 103.
Tax deed must be witnessed by the County Treasurer Rev. Stat 1881 - 6480
For form of deed see Rev Stat 1881 - 6481
The deed is prima facie evidence of all things recited in the form. Rev. Stat 1881 6480
Hanna Admr. vs. Collins 94 Ind 201

The State acquires a lien for taxes and that lien is transferred to the purchaser at Tax sale 84 Ind 147

He may foreclose his lien 84 Ind 147
Id. 342, 2d 198;
In foreclosing the lien once the description in deed is evidence he under is on plaintiff to prove that such land was intended to be sold 84 Ind. 198,
Form of Complaint - 88 Ind. 59
71 Ind. 244;

Pleading in such cases are to be construed liberally 11 N.E. 219 State vs Eastell.

The burden is on the land owner to show that the lands had not been assessed. 71 Ind 249 2nd That the had performed all the duties & rule does not prevent lien 81 Ind 180

The fact that the land is imperfectly described does not prevent lien 81 Ind 180.

Lien cannot be foreclosed without correcting discription if it is defective 38 N.E. 856

The purchaser entitled to his money if not to a deed 24 N.E. 88

Although the discription is defective yet he may recover his money Rev. Stat 1881 sec 6488.

Buchanan vs Becker
Can an administrator bring
action to recover title to the
land of decedent
Voss v Murphy 32 N.E. 1112 Ohio
In this case an attaching creditor
was permitted to bring action
under Sec 5779 2 Bal Ohio Stat
See Sec. 445 & 446 p 1943 Am. D 1894
Am. D 1893 p. 2111 Sec. 487, under
a statute similar to ours Cal.
Am D 1889 p. 3191 Sec 13 Cal.

Lewis vs Lockwood et al

Wey gandt vs Wy gandt
Plaintiff sued defendant for
divorce, judgement for divorce
payment of $200 alimony, $5 per
month for support of child $50 atty
fees adeed paied.
The court found that certain goods
named in the complaint were
plaintiffs.
Such orders may be enforced by
attachment. Burns Stat sec 1054
The defendant refusing to comply
with the order, may be attached without
notice 25 Ind 362
For form of complaint see 25 Ind 362,
The court must make an allowance
if he grants a divorce 39 Ind 188.
The provision to sec 1054, does not
apply to the latter clause of the sec.
39 Ind 188
The motion must be verified
and filed 65 Ind 511,

Norris v. B & O R R Co

Plaintiff sues for being put off of a train, which did not stop at point where he wished to get off

A passenger may be put off of the train if he gets on for a station at which train does not stop

Ohio & Miss R R Co v Bills 104 Ind 13; 3 N.E. 611

Beauchamp vs. Ind. Natl. 9 A & E R R 307 Sup.

L. S vs. Pierce 3 A & E R R. 340; 68 Ind 586

67 Ind 367; 60 Ind 12; 52 Ind 540

50 Ind 141; 7 App 253; 34 N E 243;

A time card for the government of Employees not evidence 9 A & E p. 307.

A R R Co. may determine where to stop its trains 3 A & E p 340

For a digest of cases see 9 A & E 307,

It is duty of Passenger to ascertain whether train stops before he gets on train 50 Ind 141; 7 App 253; 34 N E 243

The Rail Road Co owes the duty of running trains according to Schedule to the public 50 Ind 141

It is improper to admit evidence of misinformation by agent in this case 20 N E 775; 18 Ind 221;

A pleading must be good on the theory on which it is construed or it must fall before demurrer 7 N E. 253 106 Ind 534

A passenger may be put off at any place, if he is a trespasser on the train 68 Ind 586; 47 Ind 79

Before a passenger takes passage it is his duty to ascertain where the train stops 9 A & E p. 314

When a Train is stopped, or when the Conductor commences to stop the Train to put a passenger off for refusal to pay fare, the passenger cannot ride by an offer to pay

1 C. C. E. & R. R. Cases 259 & notes
13 " " " 31; 16 A. & E. R. R. 374
18 " " " 366 26 " " " 185

McIntosh v Darney.

Section 2033 Burns stat. provides a penalty for selling mortgaged goods without giving notice & the complaint must show who would buy, and at what price Starkie on Slander, p. 191 Vol 2

If the complaint names more than one person in whose hearing the words were spoken that fact must be proven Ann. Dig 94 p. 2810

The intended purchaser must hear defendants statement, or have it repeated to him. Ind. 92 p. 3178-182

If there was an enforceable contract the pltf cannot recover Ind. 92 p. 3178-180 but must sue on his contract Brentman vs. Note Am. Dig 89 p. 2330

as Stat

Statute providing for new parties
Burns Sec 272 Stat of 1881 Sec 272
1 App. 10; 27 N.E. 433; 39 Ind. 275
Amendments Sec 397 Burns,
Sec 394 Stat of 1881
Trial of ownership of property Burns
Sec 1397, Stat of 1881 Sec 1329.

Walkerton vs B. & O. R.R.
For Statutory authority see Rev. Stat.
of 1881 Sec 3389, Burns sec 4424
Land owner who objects may appeal
Rev. Statutes of 1881 sec 3243. Burns 4624
Proceedings should be in strict
conformity to statute 42 N.E. 616 mid.
Wilcox vs. City Jan. 9/96; 55 Ind 577,
& 58 Ind. 480,
Proceedings on appeal are tried de novo
57 Ind. 245; 36 N.E. 847, Evidence,
Petition may be amended in the Circuit
Court; 104 Ind. 583, 4 N.E. 169; Rev. Stat
1894 - 397, Stat 1881 - 394.
Part of the territory may be stricken from
the petition by amendment 42 N.E. 616
The sufficiency of the reasons given
in remonstrance are within the
sound discretion of the court
11 N.E. 814, Windfall Manf. Co vs Emery
36 N.E. 847;
Trial may be given by Aff. 41 N.E. 814
What reasons sufficient 36 N.E. 518

An appeal lies in cases of the Incorporation of a Town
76 Ind 549, Woods Judge.
St. Indy of 1881 sec 3243; Burns sec 4224
The Board shall hear testimony
Sec 4427 (3980)

The proceedings should be in strict conformity with the Statute
42 N.E 616, Wilcox v City of Lipton
53 Ind 577 & 58 Ind 480

An appeal will lie 142 - 505

See Letter Memo 55, R 42

Harkins v. Butler

Plaintiff fell upon an icy walk. Injury resulting from icy walk, negligence town makes town liable. Roads & Streets p 458. 2 Dec. 112 Ind. 576. 14 N.E. 568; 9 E & L p 388, Where there is no fault in making the walk, and the ice is smooth, Town not liable Rds. p 459,

Mere slipperyness does not make liability - 100 Pa. St. 119; 45 Am. R 364; 65 Wis 31, 15 N.E. p 728 N.Y. 24 N.E 186 152 d. 726

When snow and ice accumulate in hills and ridges Town liable 63 Iowa 523; 50 Am. Rep 756

Where, snow and rain falls and freezes - not liable, but may wait a thaw - 104 N.Y. 203, 18 A & Eng Cas. Cases 18. 9 En. of L. p 389 note a

It is contributory negligence to go upon a slippery walk 9 En. of L. 380a

A case in point
9 N.E 263 & 60
A number of days, a reveral days means 2 days 2d.
The city might have informed itself, not sufficient 2d.
Impracticable things not required 9 N.E 227, Patten et seqi

A town is not bound to use extraordinary means to clean off the ice, but may wait for a thaw 11 N.E p. 642. N.Y.

"The frozen surface it is practically to remove, until a thaw comes, which remedies the evil. The town is not negligent for awaiting that result 11 N.E p. 643 a et seqi. 15 N.E. 724 & 728

Municipality liable if it permits ice & snow to accumulate and remain upon the walks an unreasonable length of time in a rounded, uneven and dangerous condition, or in ridges of ice.

Elliott R.R.S. P. 458

Todd v Troy 61 Hun. 566
McLaughlin v City of Corry 77 Pa. St. 109
Dooley v City of Meriden 44 Conn. 117
Salger v City of Milwaukee 29 78 Wisk. 20
City of Ch v Plumner 65 Ill. app. 419
Huston v City of Council Bluffs (Ia) 69 NWR 1130; 36 L.R.A. 211
Walsh v City of Buffalo 44 N.Y.S. 942
Weyman v City of Philadelphia 34 A.R. 621; 175 Pa. St. 117
Fife v City of Oshkosh (Wis) 62 NWR 541
Hughes v City of Lawrence (Mass) 36 N.E.R. 485
* Hyane v Vill. of Waterford (N.Y.) 29 N.E.R. 130
Smith v City of Lincoln 38 Fed. R. 388

Where walk properly constructed and the ice or snow has formed with a smooth even surface municipality not liable for an accident merely because ice was slippery.

Ell. R.R.S. p 459
Evans v Utica 69 N.Y. 166
* Kinney v Troy 108 N.Y. 567; 15 N.E.R. 428
City of Chicago v McGinn 78 Ill. 347
Grosbach v City of Milwaukee (Wis) 26 N.W.R. 182
Broburg v City of Des Moines (Iowa) 19 NWR 340
Cook v City of Milwaukee 24 Wis. 270
McKellop v City of Detroit (Mich) 23 NWR 621
City of Chicago v Sibley 84 Ill. 87
Borough of Mauch Chunk v Kline 100 Pa. St. 119
* Kenney v City of Troy (N.Y.) 15 N.E.R. 726
* Taylor v City of Yonkers (N.Y.) 11 N.E.R. 647
* Cleveland v City of Cleveland (Ohio) 9 N.E.R. 225
City of Lynchburg v Wallace (Va) 29 S.E.R. 675
Dalton v City of Milwaukee 43 N.W.R. 53
Roff v City of Greenville 64 NWR 3 (Mich)

See Page 94

Pullen v Nelson 79 Wis. 445
McGuinness v Kilpatrick 78 Mass. 257

Nor will it be liable in any case until sufficient time has elapsed to clear away the ice & snow.

Ell. R.R.S. p 459
Taylor v City of Yonkers 11 N.E.R. 647
City of Lynchburg v Wallace 29 S.E.R. 675
Boyle v Borough of Mahanoy City 19 Pa. Co. Ct. R. 195

The Towns liability is based on negligence and whether it has been negligent or has exercised due care must depend on the circumstances of each case, such as the amount of snow fall, the condition of the weather &c.

Ell. R.R.S. P 459
McGinson v City of Buffalo 43 N.Y.S. 658
Seaville v Salt Lake City (Utah) 37 Pa. St. 481
Golf v Vill. of Little Falls 20 N.Y.S. 175
Hale v Lowell 10 Cush. 260
Congdon v Norwich 37 Conn. 419
Kaps v Cambridge 136 Mass. 402

The expense of removing the obstruction may be taken into consideration compared with the resources of the town as bearing on the question of negligence.
El. R.R. 469
Rooney v Randolph 128 Mass. 580
Burr v Plymouth 48 Conn. 460

Where ice forms from natural causes & is smooth even and extends throughout city, then is liable after notice.
Conghesky v City of Waterbury 57 Conn. 405

Ordinance requiring property owners to clean walks admissible in evidence.
Pomfrey v Village of Saratoga Spr. 104 NY 459, 11 NE 43
Calder v City of Utica 3 3 N.Y. 165-4

If one knows of an obstruction in the street and attempts to pass it when by reason of the darkness of the night he cannot see it, or if he had ~~[illegible]~~ overlooked it existence, he can not recover for an injury so received as will be held to have assumed the risk
Bunker v Town of Conway 69 Ind.
Indianapolis Co v ~~[illegible]~~ 99 Ind.
x Town of Goshen v Evans 112 Ind 133; 13 N.E. 256

Knowledge of a defect in a street is not in general conclusive evidence of negligence in attempting to pass it, One may proceed if it be consistent with reasonable care to do so & this is a question of fact for the jury
Town of Albion v Hetrick 90 Ind 545
M Guinness v City of Worcester 35 NE 1068

Mere knowledge of the icy condition of the street does not preclude its use if the pedestrian use ordinary care in walking over it.
Evans v City of Utica 69 NY, 166

If one sees an obstruction and knows its dangerous character and deliberately goes upon it when he is under no compulsion to go, or might have avoided it by going around, he is guilty of contributory negligence
Town of Goshen v Evans 112 Ind 133; 13 NER 206

In Pomfrey v Village of Saratoga Springs 104 NY 459; 11 NER 43
snow and ice had been cast from roof of barn onto sidewalk and left a bank 3½ ft high, which had remained there for 2 weeks.

The Mass. cases are governed by a statute fixing an absolute liability upon municipality without regard to any question of negligence.
Billings v City of Worcester 107 Mass. 3;
4 NER 8 & q note.

In Rhode Island.
City of Providence v Clapp, 17 How 161

In West Va. Chapman v West Va 31 W.Va. 384

In Maine Rodgers v Newport 6 Me. 101

In Todd v City of Troy 61 Ill. 506, ice was ice formed from water gathered in a tub on the sidewalk from a conductor and which overflowed the walk and froze that caused the injury.
This case is to the extent criticized in the Lansing Case

If there is an ordenance requiring abutting owner to clear walk of snow and ice city may show same to show that it was entitled to reasonable delay to enable the owners to discharge the duty imposed by such ordenance.
Calder v City of Walla Walla 33 Pac. 1052
Taylor v City of Yonkers 11 N.E. 642

City not required to sprinkle sand or ashes on icy sidewalk, but may await a change of temperature which will melt the ice.
Taylor v City of Yonkers (NY) 11 N.E. 642
Cummens v City of Worcester 35 N.E. 1068; 160 Mass 272

If the officers require by ordenance the citizens to clean the walks of snow they may await the action of the citizens for a reasonable period without being guilty of negligence.
Taylor v City of Yonkers 11 N.E. 642

Where an injury is caused by a fall on the icy walk and the an unlawful and negligent grade of the sidewalk concurs in producing the injury as the concurring cause for which the City is liable cannot be held ~~Or be the sole~~ than caused the injury without the presence of the ice, City not liable.

Taylor v City of Yonkers 11 NER 942
Hadley v City of Detroit 76 N.W.R. 104
Gafford v Village of Green Island 26 Nep. 669
Johnson v Vil. of Spokane Falls 16 Nep 685
Dyer v Vil of Hammondsport 130 N.Y. 665; 29 NER 265

Ad Contra notes to 4 NER 809

If the ice and snow is accumulated by artificial means, Municipality is liable.

McGowan v City of Boston 49 N.E.R. 633
Walterwyer v Ks. City 71 Mo. App. 354
Thompson v Village of Saratoga Spgs 47 N.Y.S. 1032.
Miller v City of Bradford 40 A. R. 409; 186 Pa St. 16
Stone v City of Poughkeepsie 44 N.Y.S. 609

Ad Contra,

Gavett v City of Jackson (Mich) 67 N.W.R. 577
Hutchinson v City of Ypsilanti (Mich) 61 N.W. 779.
(Street car tracks)

See City of Muncie v Hey 164 Ind 570

From page 84.

Jarrett v City of Jackson (Mich) 67 NWR 517
Anthony v Village of Glens Falls 38 NYS. 536
Safford v Vill. of Greenbush 26 NYS. 669
Calder v City of Walla Walla 33 P.R. 1054
Dyer v Vill of Green Island 24 NYS. 1014
Chamberlin v City of Oshkosh (Wis) 54 NWR 618
Johnson v Vill of Glens Falls 16 NYS. 585
x Winne v City of Albany 15 NYS. 423
Bell v City of York (Neb) 48 NWR. 878
x Irwin v Vill of Greenbush 3 NYS. 76
x Betts v City of Gloversville 8 NYS. 795
x Hunter v City of Minneapolis 44 NWR 1026
x Harrington v City of Buffalo 24 NER 186
x ~~Harrington v City of~~
x Hausman v City of Madison (Wis) 21 LRA. 261 (note)
~~Landolt v Norwich~~
Landolt v Norwich 37 Conn. 615
Bitterby v New York 4 Daly 16
Bell v York 31 Neb. 842
x City of Aurora v Parks 27 Ill app. 409
x Stanton v City of Springfield 12 Allen 566
Hutchins v City of Boston 12 Allen 571
Johnson v City of Lowell 12 Allen 572
x Nason v City of Boston 14 Allen 508
x McQuinn v City of Elkhart 14 Ind App. 671-679

Two weeks notice not sufficient to require city to remove ice and snow.
Anthony v City of Glens Falls 38 NYS. 536

48 hours notice not sufficient
O'Connor v City of New York 8 NYS. 530

4 days not sufficient notice
~~Harrington v City of~~ Buffalo 24 NER. 186

3 days not sufficient.
Winne v City of Albany 15 NYS. 423

In Lyon v City of Logansport 4 Ind App 21 plaintiff fell upon a gutter crossing which had been worn smooth & slippery & was covered with snow. The ~~Court~~ Jury however expressly found that the sole cause of injury was the defective gutter crossing & excluded all reference to snow (p. 24)

City not liable for failure to enforce its ordinances.

Michigan City v Boecklin 122 Ind 39; 23 NER 518

Pinchin vs. L. S & M. S Rd.
Action for damages for the negligence of defendant.

Service of summons on a conductor good 9-243; 12-4; 43-407.
Pltf & Defts each have a right to the highway, and each must exercise his rights so as not to interfere with the other. 41 Am R. 97a; 82-435; 41 Am R. 580-355;
One attempting to pass between cars should exercise such care and prudence as the exegencies of the case require 17 Am R. 521 & 550.

Plaintiff not bound to wait 3d Am. Railway Rep 4. 543a (30 Mo) 4 Am. R.R. p. 524, 51 N.Y 544,

Absence of flag man does not excuse a man from using his senses. 17 Am R. 359,

One passing onto a track is not chargable with negligence if he makes a proper use of his senses and cannot hear & see a train 2d Am. Rep. 517-520a.
When a man exercises that degree and amount of care, which prudent persons usually exercise under like circumstances he is without fault. 15 A.R. 640a; 4 A. Ry. Repts. 511a (52 N.Y 215; 8 A & E. C. Cases 225;
Where a man has used his senses, and they are ordinarily acute and no danger is seen he may act. 6 A & E.C. 112, 10

One is not obliged to forego travel on a public highway, merely because he knows it to be dangerous, or to shew that in the use of a highway known by him to be dangerous he used extraordinary care to avoid an injury, for which he seeks

to recover damages, but he should be careful in proportion to the danger of which he had knowledge, and may proceed if it be consistent with reasonable prudence to do so, 86-113a;

Nor even where the plaintiff sees that the defendant has been negligent is he bound to anticipate all the perils to which he may possibly be exposed by such negligence, or to refrain absolutely from his usual course on account of risks, to which to which he is probably exposed by the defendants fault. Some risks are taken by the most prudent men and the plaintiff is not barred from recovery for his injury if he has adopted the course, which most prudent men would take under the circumstances. 89-53

All persons have a right to use the highway 4 A&E.6 618a-622;

As to duties of Rail Road Comps. at crossing of highways see 6 A&E.6 page 1 to page 126 inclusive A reasonable look-out should be kept by the company 4 A&E.6562.

The care in conducting any business should be commensurate with the danger incident to the business.

Stopping on a Street in violation of an ordinance is negligence 5 A&E.R.W.Repts 442, 26 Mich. 254; A&E. Cases 192a, 22 N.Y. 76;
A Train broken in Two and running without a brakeman is negligence 5 Am. Rg. Rep. 454; 28 Wis 487;
It is negligence not to ring a bell or blow a whistle. 7 Am Rg R. 207. 41 Ann. 103;

Where a train is left standing over a highway, and a traveller walks around it, trespassing on the Company's land, and is injured by a train on the Company's land, the Co is liable
11 Am & E. R 420; 2 A & E. R 254;

A rail road company operating its road along street is bound to greater care 1 A.E.b 155;
and should keep a look out. 4 A.E.b 566[c]

The Statute forbidding a freight train to stop on a crossing may be used in evidence 89-165;

A traveller has a right to assume that the company will not violate the law. 2nd Am. Rept. 517 & 520[a]

Habits of plaintiff when admissable
42 A.R. 227, 41 A.R. 119

The Jury may consider plaintiffs suffering 85-171[a]

Slight negligence, contributing to injury, but with great negligence on part of defendant, will not defeat recovery 25 A.R. 308; 31 A.R 750; 8 A & E.b. 225 & 411[a]

Negligence is a mixed question of law and fact 76-292; 1 A & E.b. 45-154;
What is negligence 8 A & E.b 383;

When negligence of plaintiff is doubtful case should go to the Jury. 1 A & E.b 128; 4 Id 566[a]

Even if Plff contributed to the injury by slight negligence, yet deft is liable.
5 A & E.b - 282

Plaintiff is bound to exercise ordinary care
5 A & E.b. 167[a]

To bar Pltfs recovery his alledged negligence must be such as he could under the circumstances reasonably anticipate would result in injury 8 A & E. 6 486

When the Jury find that the ~~Deft~~ was negligent and pltf was not court cannot set verdict aside 8 A & E. 6 395.

Answers, by Jury, to interrogatories should be considered as an entirety and Judgement should be rendered on general verdict, unless the answers are irreconcilable ~~with~~ with 90-469

Instructions are to be taken as an entirety. 90-492

Where a person is placed in a peculiar peril by the fault of the Rail Road Company, the co will not be absolved from

liability, because he does some act which turns out not to have been the most judicious course under the circumstances 17 A & E. R R Cases page 639 note.

A Breach of duty, or violation of law is negligence 101 Ind. 522

Answers to interrogatories will not control general verdict, unless they cannot be reconciled with it on any reasonable hypothesis. 92 Ind. 66 93 Ind. 24;

As to deft duty when it stopped its train on x see 3d Am. Rep. p. 543-

Reynolds vs. McCurdy.

A Judgement rendered against one of several Joint Creditors releases the others

'64 - 81
74 - 110
70 - 389
40 - 481
40 - 349
3 Ala. - 657
3 Dev. 78
37 " 264

2/6. execution & a note by one partner does not release the others. 49 - 82

Mc Ginnis vs McGinnis

Actions on account must be brought within 6 yrs. Stat. Sec. 292. but the plaintiff against an estate may have 18 months from the death of the decedent to file his claim 3d. 298 & 9 Ind. 540;

Mutual accounts not barred within 6 years. See Angell on Limitations p. 128 Id. Sec. 147;

Mutual account, definition Angell on Lim. Sec. 149 bottom page 135; & 8 Ind 448 bottom & 449 A mutual account is made up of matters of set off, Angell on Lim. Sec 149; The matters of set off, being payments. An account all on one side is not a mutual account Angell on Limitations Sec. 148 read whole section. 1 Blkf 373; 9 Ind. 117.

Administrator a competent witness 9th Ind. 116; Cubal vs. Ryan 26 Ind. 207.

In this case when did the statute commence to run? In Sitton vs. Smiley 9 Ind. 116 it is held to begin to run from the time the contract ends. In Parks vs. Boland 9th Ind. 301 it is held that it would be unreasonable to assume that no time for payment was intended until the contract was completed. and in Davis vs. Gorton 16 N.Y. page 255 it was held as a matter of law, in a case somewhat similar to the case at bar, that such a contract is one from year to year, and that the statute would include only that part within six years, prior to testators death.

In an action to recover Taxes paid the Statute commences to run with each payment 14 N.E. 554.

In Perrill vs. Nichols 89 Ind. p. 448 bottom of page, it is held that where the items are all on one side, the statute bars all more than six years old.
See 2 N.E. 585 not 5
14 N.E. 554; 12 Ind. 174,
80 Ind. 540 ; 9 N.E. 306

Section 217 of the Statute does not extend the Statute so as to revive a claim that is barred, but simply gives additional time to file the claim
Harris vs Rice 66 Ind. 267
Kirkpenbug vs Morris 80 Ind 540

Where an ambiguity exists or the contract is not explicit in its terms, it is competent to prove the custom of the place relative to the obscure point in the contract to explain it Wallace vs. Morgan 23 Ind 402 below middle of page.
Abbots Trial Evidence 296.

Hostetter vs Davis

Exceptions tried by Court -
25 Ind. 440 -
Motion to vacate report in the
proper form 73 Ind 496.
When a report may be vacated
Freeman on Co. J. Sec 523,

Aldrich Adm. vs Baxter
An administrator may be appointed
where assets come into a county after
the death in another Co. Rev. Stat 1881
Sec 2228, 4th.
After an estate is settled and
the assets distributed, and the
admr. discharged, suits will
not be entertained, but query
if claims are due the estate -
94 Ind. 273 Sutton & Page
The statute construed in the
case of Braxton vs Renner 2 N.E. 631.
The appointment of Aldrich could
not be attacked collaterally
and if irregular could only be
attacked in a proceeding to revoke
his letters 90 Ind 42
Statute 1 R.S. Sec 2391
Barnett vs Barnett 7 Ind. 45
38 at E 650
39 at E 433

Mason vs. McIntosh

A warranty of the genuineness of a promissory note is held to arise on sale and delivery of the note to a purchaser in good faith. 36 La. R. A. 92

Draister v. Baker

Land purchased with the husbands money and deeded to husband wife by entireties, in fraud of his creditors may be sold to satisfy the debt—
Wilds v. Bogan 55 Ind. 331
McConnell v. Martin 52 Ind 434

Plaintiffs note made Feb 24 /92
Land conveyed Oct 5. 93

Whether the conveyance was fraudulent is a fact for the jury
52 Ind. 434; 437-44
Whether fraud exists depends on the amount of property owned by husband when deed was made
52 Ind 434—438 middle.
Wifes inchoate interest in other lands may be conveyed.
90 Ind 271, 31 N.E 1130
Necessary averment in the pleading in regard to the

wife 72 Ind. 52;

Weaver vs Weaver
Partition

A commences a nominal Trustee
Rev. Stat Burns Sec 3403

Leach vs Lozier
Ejectment Sec 1062 Burns
Deed may be in Dispute
more Sec 1073 Rev. 1881.
Roth vs Sims 22 N.E. 313

Antenuptial contracts are binding
14 Ind 505; 17 Ind 636;

Antenuptial contract may be recited
14 Ind. 505;

Cranberg-man vs. B & O. R. R. Co.

Hart asked to be made a party defendant and filed disclaimer, and it was adjudged that he has no interest in suit. On appeal he need not be made a party

Hamman vs Baxter 69 Ind 91
Keller vs Boatman 44 " 101
Hadley vs Hill 73 " 442
McAlister vs Stale 81 " 256
Berghoff vs McDonald 87 " 551
Rev. Stat 1895 page 179.

~~Dills vs Patten~~

Ober vs Broderick

Defendant executes chattel Mort. to plaintiff in Indiana on property in Indiana, and with consent of plff. removed property to Ohio.

Mort need not be recorded in Ohio 19 L.R.A. N.S. 255; Mortgage may recover in Ohio 10 Ind 28. Jones on Mortgage sec. 301, and from foregoing sections before & several after.

If mort. is in another state property in this must be recorded there 76 572

Lockhart vs - Osborn
Where a surety pays a note for his principle, the Statute of 6 years limitation bars a recovery after that time 98 Ind. 30.

Knight Drain

In this case the right to assess remote land situate much above the drain, simply because the water from it runs into the proposed drain is considered, and when can a new ditch be dug on an old one.

Templeton v Vanblaw 72 Ind 134 is relied on by petitioners to authorize the assessments.

The drain in question is a natural watercourse

Taylor admr. vs. Fickas 64 Ind 175 bottom.

Upper land owner may by drains run his surface water into a natural watercourse 2 d. 472-134

64-173 bottom

The size and capacity & costs of the old Ditch may be factors 7 N.E 223. Dreher v Trian. See 5 N.E 663 for a case like the one at bar

Hardy v McKinney 8 N.E. 236 107 Ind 364.

By excepting to the conclusions of law, the party waives any objection to facts found 666 Bass vs. Elliott 5 N.E. 663 Dep 105 Ind. 517

The land benefitted only can be assessed 140 Ind 28

Oberheim v Jackson Tp.
Suit on a township acct.
Answer alleging that the township had no funds at the time to pay and that it incurred indebtedness exceeded Taxes assessed and not paid.
Section 6006 Rev. Stat & 8081 Burns sets forth the law of the case.
For sufficiency of answer see 83 Ind 121.
All persons are required to take notice of existing statutes and are bound thereby 83 Ind. 121

All orders or contracts made in violation of sec 8081 are void 42 N.E. 901.
Persons contracting with a municipal corporation at their peril, inquire into the power of the corporation to contract 42 N.E. 901. 26 N.E. 567
The indebtedness does not attach to subsequent funds

42 N.E. 901;
The provisions of section 8081 apply to the Forfeiture of a school Trustee Jeff. School Tp. v Litton 116 Ind 467 19 N.E 323;
On March 5th 1883 (see act 1883 sec 6897-6898) the Legislature passed an act Legalizing acts of Trustees in violation of sec 8081 and making Trustee liable on his bond to the holder of illegal orders, and on March 9th 1889 (see acts of 1889 p. 278) repealed the act of March 5/83. The fund on hand means the cash in the Trustees possession and, "the fund to be derived from the Tax assessed &c" is the Tax to be collected the year the debt is made, between Jan 1st and Dec 31st, assessed and levied the year before. Jeff School Tp. vs Litton 19 N.E. p. 325 bottom.
Township Trustee means School Township Trustee 5 N.E. 755 (116 Ind 181

Definition of "debt" 14 N.E. 88,
A Trustee cannot contract a debt for school supplies, unless supplies suitable and reasonably necessary for the township, have been actually delivered to and accepted by the township 107 Ind 43; 7 N.E. 760; 98 Ind 496; 75 Ind 368;
Orders not negotiable 14 N.E. 88;
The value of the property may be proved 26 Ind 67

Brown vs Brown

Improvements not ~~chargeable~~ to the lessee v. Truman on Partitions sec 510, 89 Ind. 382

Consent of Co-tenants necessary, Id.

Improvements must be necessary and necessity cannot be inferred from the fact that value of lands is increased. Id.

Brant vs. Electric Light Co

Brant owns stock in the defendant McIntyre & Lackey own the balance.

Brant has ... $ 185.00
McIntyre ... $
Lackey ... $

Cap. Stock to be $10000.00 divided into shares of $50.00 each.

At time of incorporation McIntyre had 30 shares = $1500 - Brant 30 = $1500 - and Davenport 20 = 1000.00

For articles of association see Miscellaneous Rec page

A Receiver of a corporation may be appointed where in the discretion of the court it is necessary to secure simple justice to the parties Rev. St. 1222 Burns 1236, Wayne Co vs Hammond 129 Ind 368 27 N.E. 457

Where a majority of the stock is held by a family who vote away the profits equity will interfere to protect stock holders. 27 N.E. 490

Where a majority of the stock is held by those who vote it away for salaries to themselves a court of equity will relieve the injured stock holder 27 N.E. 490; Wayne Pike Co vs. Hammond. 85 Ind. 180;

The court may appoint a receiver to take the property from the hands of officers who mismanage it 136 Ind 313 x 318 x 34 Ind 316 x

The complaint in the Iron Hill case shows that the officers mismanage the affairs of the Co, and a Receiver is appointed No demand need be made of the officers before asking for a Receiver 34 Ind 316 x

No notice required when summons has been served 73 Ind 241 & 243

Pleadings and Demurrs are not proper at hearing 96 Ind 350 - 331 - 510.

The defendant was organized under the Manfr. & Mining act, as the articles provide per "Power"

Officers shall make annual

reports Lee 3863 Rec S. 1881

Pouts v. Pouts.

Interest may be collected when there has been a vexatious delay 3 Ind 69 bottom.
9 Ind. 402 bottom
57 Ind 485 bottom
62 Ind 361
68 Ind 130
Where the wife permits her husband & use her funds without any agreement to pay interest she can recover interest only after his death
Wormley's Estate 137 Pa St p. 101
Am & Eng. Enc. of Law Vol 16 p 1018 a
A note fixing no time for payment and not providing for interest, no interest until demand
Adams v Adams 53 N J Eq 42
Am & E. Enc of Law 16 p 1024 a

State vs. Moore

Statute vs. Obstructing ditch

Rev. Stat 2153 Burns 2274

" " 2154 " 2275

Indiana 2067 2155

One may dam back the water on the boundary of his own land 73-278; 75-241

One may dam back the water against a Municipal corporation 75-241

A natural water course defined 75-241. 20 N.E. 717; 16 Ind. 125

A municipal corporation has no authority to stop or accelerate the flow, or restrain it 75-241

One may not collect water into a channel and discharge on his neighbor 75-248; 64-196; 67-204

What is an obstruction 118-125 (21) 20 N.E. 713, 109-511, 10 N.E. 910

A highway is only an easement 199-214 Ind. In this case the owner raised grade and overflowed highway

The law is settled in Indiana that a man has a right to ward off surface water from his own land Kehm v. Randle vs Haney 90 Ind 193 Lower par

Nichols vs. Strong et al
Suit by surety who has paid debt

Surety having paid the debt may sue.

Surety can have Judgement W.R. if old contract was so Burns sec 1231
And same interest Id. sec 1233

Tri-State vs Piper
Non resident defendant may be served by any person and proved by affidavit 55 Ind 590

Pair vtal. vs Pence lo

Before selling a patent right the vendor must recd Patent. Burns 8130
Contents of note Burns Sec 8131
Penalty for disobeying Sec 8132
The sale of the Patented article not a sale of patent right
Hankey vs Downey 116 Ind 118. 18 N.E 271
What constitutes a sale of a patent right 138 Sup. U.S.p. 252
Book 34 p 925
Eclipse Engine lo vs Zimmerman 44 N.E 1115:
le Upper Plate sale, is not a sale of a right to use it.
Stephens vs Gladding 58 U.S.p 447
Book 15 p. 156
Stephens vs Leady 14 Howard 527
Book 14 p. 528
Hankey vs Downey 116 Ind 118 18 N.E 271, 25 O.S. 26

Rail Road Cases

Lo. S. & M. S. vs. Stupox. 123 Ind 210; 23 N.E. 296

Employee bound by his contract, and the rules given him 12 N.E 380, 111 Ind 219;

Martin vs. Alsbaugh

In order successfully plead an estopel, the party pleading must have changed his position, in consequence of his representations

Ch. pleading Baker 24 N.E. 234; 124-390

Burns vs Alsbaugh

Plaintiff [illegible]

[illegible] Alsbaugh

15 Ind. 297, 17 Ind. 570

15 Ind. 596

These decisions are under Statute of [illegible], which is same as 99 Ind. 7255; Married woman's contract for sale of her land must be in writing and her husband must join 31 N.E. 955, 132 Ind. 387

Relief Taxation

Personal property of non residents in the hands of trustee assessable where trustee was appointed

Acts 97 p. 272

Property of a non resident not taxable in this state

140 Ind 318. Treas vs Ruth -

Property of a non resident not taxable here unless in the hands of an agent dealing with it

Foreman et al v Byrns 68 Ind 247

Complaint for injunction 2d.

The fact that no tax is paid therein no cause for taxing here. Herron vs Keenan 59 - 472

Where money owned by a non-resident is in the hands here, or in the hands of an agent

loaned and loaned collected and reloaned here, it is liable to be taxed

Bush et al vs. Miller 147 - 586

A N.J case in 44 N.E 707

Brown vs. Whitlatch

Partition

Plaintiff owns ⅓ and the defendant ⅔ of the land. Defendant occupies the premises, and has made necessary and valuable improvements.

If improvements are necessary & the preservation and enjoyment of the property and enhance its value, defendant may recover

Elrod vs Keller 89 Ind. 382

Freeman on co-tenancy Sec 309 + 370

Allman vs Hawley 20 N. E 436

117 Ind 532;

Co-tenant not liable for rents unless he recieved rents.

Freeman on Cotenancy sec. 274 &c.

Crane vs Wagener 27 Ind 32;

Humphreys vs Davis 100 Ind 370

Jenkins vs Dalton 27 Ind. 78

Where a tenant has recieved rents, it may be set off against improvements

Peden vs Cavins 34 N. E 7

139 Ind 494

Rev. Stat 1881 Sec 2888

Plaintiffs Reply

29 Ind R. A. 449 W. 451 & 2nd

Rents cannot be collected by one Co-tenant & another Costs & improvements cannot be collected -

46 N. E. 307.

6 N. E. 243

63 N. W. 678

109 Ind 547

McConnell v Burch

Party after having notice and subpoena served is in contempt and his pleading may be stricken out.

Chaffin v Brownfield 88 Ind 305;
Tipsp v Carr 80 " 371
Belton vs. Smith 45 Ind 291
Smith vs Rosenham 19 " 256
Birch vs Beatty 111 Ind. 403
" " 12 N. E 523

Party moving for dismissal must show what he expects to prove by the examination
Birch v Beatty. Supra
White v Morgan 119 Ind. 338
21 N. E 968
Where all co-parties are not notified, a motion to strike out pleadings should be overruled 148 Ind 547

Plaintiff claims land in consequence of a verbal promise by his father to ~~convey~~ leave it for him at his death.
The land was deeded to John & his wife; See Deal v Smith 1 " ". C. 176, John & his wife deeded acres to Plaintiffs wife on Nov 8/70 $610 — See C. C. 170.
John sold 80 acres to Breakbill April 5/76 for $4900 — B B 200 — Lydia deeded all she had to John April 5/76.
If testator has mind enough to know the value and extent of his property, and number and names of those to whom he gives it. he can make a will
Brady v McKnight 48 Ind. 502
Dyer v Dyer 87 — 13
Kimble v Sales 11 . 95
Durham v Smith 120-463; 22 N E 335

Burkhart v. Gladish 123-337; 24 N.E 118
Mental condition before and after may be inquired into,
Dyer v Dyer 87 Ind 13; 120-207
Staser v Hyam, 120 Ind 207; 135 Ind 143.
Neither party competent to testify as to what occurred prior to [illegible] and Elizabeths death
Rev. Stat 1881 Sec 499, 87 Ind. 97
Burns Statute Sec 507.

Party not competent is rebutted 27 N. E p. 117
In regard to grantors sanity both parties competent 24 N.E 118 123 Ind 337;

If a rational disposition is made inequality does not invalidate it
Lamb v Lamb 105 Ind. 456
Conway v. Vizzard 122-266

Former statements of grantor are competent as to his sanity, but not as to undue influence
Conway v Vizzard 122 In. 266; 23 N.E. 771

Declarations of grantor supporting the deed are admissible in evidence
Lamb v Lamb 105 Ind. 456

Services rendered by legatee for testr admissable 123 Ind 337.

One not an expert, after testifying that he had long known the testator, had often dealt with him and conversed with him both before and after the will was made, may give his opinion
Ry num v Crawford 86 In 262-26

A physician may be compelled to testify what he learned by seeing his patient. A & E. Ency of Law vol 11/21

Miller v Forgerty
[illegible] land by
[illegible] Indian
[illegible] by [illegible]
[illegible] 297 Tenn Rep 246
[illegible] [illegible]
Prior Matters Res Judicata
[illegible] 4 Wheat 213
(4 Wh 295) Cranch —
115 Ind 297,
The Lessee of [illegible] Cannot
Bailey vs Lessee interest
[illegible] Hopkins vs Hudson
107 — 191, 8 N-E- 91
[illegible] Amount [illegible]
[illegible] action [illegible]
[illegible] Contract made with [illegible]
52 Ind 178 2nd Stage
Carroll vs Barney 94 N E 374
15 Am En [illegible] 20,
Knapp v Brown 45 [illegible]
14 Am Eng Law 19 & 20

53 N E 495

Hoag Block Levy Ins v Lem
91 N E 578.
[illegible]
Same Property —
100 Ind 586;

Hyde vs [illegible]
[illegible]
Illinois [illegible]
12 Apx 233
[illegible]
Real Estate 713

B. & O. & R.R. to Goodrich
Title may be acquired by app-
Burns Vol 2 Sec 5159 et seq
Form of Complaint. 39 Ind 209
Petition need not state that
the parties cannot agree 59 Ind 218
Overruled 74 Ind 44
If there is conflict, the latter act
Sec 5159 et seq. governs 59 Ind 217

Exceptions Form of 39 Ind. 211

Damages relate to time of app. 68 Ind 139
Witness may not give his opinion as
to amount of damages 59 Ind 579
Proceedings are ex parte upon
the appeal 68 Ind 96a

Filing survey must precede an
entry 74 Ind 44a

Rail Road line may be changed
Burns Vol 2 5171, Rev Stat sec 3914
Persons damaged by the removal of
old line must be paid 2d.

A R.R. incorporated in this state may
consolidate with a R.R in an adjoin-
ing state, and then the consolidated
road, may purchase and condemn
lands &c Burns Vol 2 Sec 5215. 2 Rev. St
sec 3951;

Any company may condemn
right of way. Burns Sec 5161

Rail Road Co. may determine
the necessity for taking land
Elliott on R.Rds vol 3 p 1342
The taking of land must be
confined to what is necessary
to discharge its public duties.
Elliott on R.R. vol 3 p 1344
Lands taken should be reason-
ably necessary for its use 2d, 1345

A domestic R.R. does not loose its right to condemn by being consolidated into another co of the State
Elliott on R.R. B. p 1398.
In condemnation proceedings the owner of the land will not be heard to question the legal organization of de facto R.R.
2d. 3. p. 1349; 10 A. & E. R.R. Cases 335
A R.R. having leased its road bed, for a term equal to its legal existence may condemn. 2d 3. p 1356,
The right to condemn is not exhausted by the first condemnation - Id - 1385
A R.R. Co having leased its lines may condemn
Elliott on R.R. Vol 3 p 1486
Improvements made by the Co, with knowledge of owner not taken into account in assessment of damages 100 Ind 409

Notice must be given to R.R.
vol 3 p.
Requisites of Notice to R.R. Co
Vol 3 p. 1478
Article of appropriation may be amended 82 Ind 117.
Chicago & A. R.R. Co vs Hunter 128-113
27 N.E. p 477
If work is negligently done damages resulting may be recovered by suit after road is built. Id. p 479
The petition may be signed by an agent, duly appointed to convey right of way. 31 N.E. 220
The description does not [illegible] but it may appropriate additional land back of the [illegible]
101 Ind 366.
Witness may not state amount of damages B. & O. R.R. Co vs Stone 59 Ind. 579. Witness should not state how much less the farm would be worth B. & O. R.R. vs Johnson 59 Ind 480

In Re Harkins
Guardian may mortgage
wards land 81 Ind 451

Pratt vs Pratt
Complaint filed under
Sec 6984 Burns Stat.
Cause for hearing at next term
Sec 6985
Sec 522 provides for ten days
service, but does it include
cases of this kind?
The statute provides that the
~~that~~ service for divorce in term
time is good. Elliotts Supp. Sec 16
but provides for no other kind of
action - Acts of 1883 p. 199. Burns,
Sec 524,

Robbins vs Aldrich

A. Plea must either deny, or confess and avoid

1 Harrison Standen p 475

8 Blkf 95, 23 Ind. 229

State vs. Cramer & Allen
Indictment under section 2 chapter 54. Statute 91 p. 77 for using dynamite in streams & water.
Every act shall embrace but one subject, expressed in title.
Burns. Sec 115;
The insurance law of 1855. Gen St vol 1 p. 398. in this act the title is not broad enough to embrace sec 2 of the act. 24 Ind. 247
14 Ind 239; 55 Ind 100
The title "An Act to regulate the taking of fish in the waters of the State, to protect the waters of the State from pollution.

In determining the constitutionality of a law, the Court cannot consider the justice or propriety of the law 138 Ind 395 State vs McClelland.

K [redacted] v Potts
7 Ind p. 483 2nd Hanna

Pollution means, defilement uncleanness
Definition of the statute
27 Ind pl. 226 bottom to the word "specified" on p. 227
(Specific acts of encouragement)
13 Ind. 427

24 Ind 1 25 - 32
14 " 290 in Mandate
12 Ind 641

Wolverton v Wolverton Jan Term 1866

Justice Court is a court of record.
Hanlon v Board Commrs. 14 app. 662
Priscler v Turner 57 Ind 60
Hooker v State 7 Blackf 272
Lasso v State 4 Ind 364

Emerick vs Benchat
Petition for a writ of mandate and remonstrance & Judgment - Remonstrant may open & close 89 Ind 252
Original papers not admissable in evidence Daggy vs Coats 101 Ind 259
Any proof required before the board of Commissioners is required on appeal
Malone vs Hardesty 101 Ind 79
Petitioners must prove notice &c 89 Ind 262 bottom.
Remonstrant has burden of proof 89 Ind 262
Papers may be amended 101 Ind 557
Reed vs Brennan 89 Ind 252
Metts vs Marsh 129 Ind 18
22 N.E. 702
McKeen vs Porter 134 Ind 583

Sauter v B & O R R Co

Plaintiffs wife was driving a horse and wagon across the track of the defendant, when near the track the whistle blew, and it is claimed the horse became frightened and he ran away and was injured.

C. I. & L. R R v Davies 104 Ind 326 ; 4 N.E 34

R. R. Co not liable for not whistling or ringing bell if plaintiff could have seen train approaching by looking

C Am. Ry R R Rep p. 66 & p. 74

Rosenberger v Grand R. 15 R R Law 448

Chicago R R Co v Dougherty 19 R R C 292

Schofield v Chicago R R 19 " 353

Husband cannot recover for loss after death of wife 14 Ind 595

Burns 1901 Sec 283, 285

See also Sec 267

Right to bring action is statutory and before it can be brought he must bring himself within statute.

Hensley v Am. Co 141 Ind 433

Hillicker v Coal Co 152 " 86

Burns v. G R & I R R 113 " 169

Newark Co v Hoffman 23 App. 1

Plaintiff cannot recover in this case

Norford vs C. I. & L R R No 17820

Contributory negligence should be pleaded in this case See Acts of 1899 p. 58

Burns Sec 359.

Funeral expenses cannot be recovered, Jackson v R R 140 Ind p. 241

17 App p. 673

Evidence of the conduct of the plaintiff, physically or financially is not [illegible]
Mayhew v Burns 103 Ind 328
Lehman v R Co 140 " 241
Eng Encl. L. 581

Although no signals were given, the deceased should have looked and listened
62 N. E 456

Who may sue
Burns 1901, Sec 283, 284 & 285
Long vs. Morrison 14 Ind. 595
C. & Ale RR vs Kelly 23 " 133

Def failing to whistle is no excuse for deceased not looking
L. N. I. R R Co vs Butler 103 Ind. 31; 2 N.E. 138
Chicago R R Co vs Thomas 157- 134
Lincoln v L & Ell - 21 Atl

See page 188

Coal Co vs Mader - Ford
Suit on account for goods sold on an order made by defts on plaintiff

Suit on account, a sale & proof of sale or contract
4 App. 6 p. 411 a

A suit on an implied contract is not supported by proof of a special contract
Crum vs. Yount 12 Ind. App. 306 a
Ind. R W Co vs Forsyth 4 Ind App. 326
29 N. E p. 1138
An order for goods is merely a proposition to buy on the terms proposed but when the goods are shipped the contract is complete 7 Am - Eng Enc. 138 & 139

APPELLATE COURT.

3501. C., I. & L. Railway Company vs. Reed. Carroll C. C. Reversed. Robinson, P. J.—If by looking in the direction of an approaching train a traveler could have avoided a collision with the train, he cannot recover for damages thus received, although the railway company did not give the required statutory signals at the crossing.

Wolverton vs B & O.
A default concludes the defendant in the character in which he is sued
63 Ind 67
Default admits that something is duly but leaves the amount in proof
45 Ind. 14, 101 Ind 559
Motion for new trial not in order 7 Ath. 84
Proof must be given as to amount due 24.
Jurisdiction not waived by a default 7 Ath 84
Complaint must state that the Ind. deft resides in the County 12 N.E 291
111 Ind. 148; 116 Ind 160
Complaint must show that an execution was issued to Sheriff of County where deft resides.
116 Ind. Rep; 18 N.E 526

Compt must allege that execution issued to County Sheriff of County where deft resides.
Harpur v Belagg 14 App. 426

Summons is in such County 116-160.

The proceeding is an independent one, not a continuation of the original cause.
Harpur v Belagg 14 app. 426

The Judgment creditor acquires a lien on the claim from the time of service of writ.
Cooke v Ross 22 Ind 159
Traydon v Barlow 10 Ind 197
Handley v Haywood 40 Ind 243

If the Judgt debtor assigns the claim due him before service upon him the assignee will hold the fund altho debtors debtor was summoned before such assignment
Handley v Haywood 40 Ind 243

Debts accruing after service of writ cannot be reached
24 N.E Rep Cases 646; 78 Ill. 359; 80 Ill app. 278
7 Ohio Cir Ch. 183 S.

See Page 178

Santer v B & O
Freightening horses
Thompsons Neg. Vol 2 p 603
24 L Ann 192
21 L Ann. 10
Engineer may give danger signal Le N A & Stanger 7 Ann 185
Le N A RR v Schmit 134 L 16
I. H. & R R v Brunker 25 N. E 178
I. U R v Boettcher 28 N E 337

One voluntarily attempting to cross a R.R. before an approaching train cannot recover for injuries received Konrady v Le & M S 24 N E 1069

Barker vs Hill
Money loaned and
secured by mortgage for
the purpose of improvement
of the property in favor
of a mechanics lien for
work done in the improvement
150 Ind. 68

Wiseman v Wiseman

A party may be examined
See Stock sec 517
See 9 Ath 88

Howarter vs Ringler

Defendant must know the accusation to be false, Henry vs Mobley 23 Ind App. 316 Dalton

Where the answer charges the plaintiff with a crime he may offer testimony of his former character Downey vs Diller 52 Ind 449

Other acts of larceny may be proved. 124 Ind 101; 24 NE 750

General rumors and suspicions may be given in evidence in mitigation 10 App 587

Evidence of general bad character may be given 19 App 133

Holbrook vs

A tenant for life can make no disposition of land after his death, but if he sow the land his executor will be entitled to the crop. Williams on real prop. 455 Life tenant entitled to the growing crops 143 Ind 295; 28 Ind 278,

Freers v B & O
Shipment transferred to other line
Suit on Common Law liability cannot be sustain when shipment was on contract
14 Appl 410 Also 2nd Appl 146

Variance between complt and proof of a contract
2 Appl 146, 27 NE 486

The R R Co may limit its liability by contract
29 N.E. p. 1138, 4 Appl 326
11 Appl 517

Notice of loss must be given 11 Appl. 517
Notice must be alleged in complaint 11 Appl. 517
519 2nd Headnote.

Where an action is brought on a Common law liability, and the

proof shows that the employment was under a written contract. plff cannot recover
89 Ind. 471
14 Appl 411

McClintock v Shaffer

John Shafer bought W 1/2 of Lots 109 & 110 Butts Dec 2/99 for $900 and caused a deed to be made to himself jointly,
On Feb 13/00 he bought Lots 138 & 139 for $650 and had them deeded to himself
On Feb 27/00 he bought Lot 115 for $650 and caused it to be deeded to himself and wife
He died May 31/01
His widow & S. Shaffer was appointed administratrix of his estate on June 31 1901
Administratrix on Oct 8/01 filed inventory & appraised property $2382.13
Mrs C. Ackmir filed note on which Jud rendered Sept 13/01 for $332.00 & Costs. Gengle has claim for $323.

Longenberger v Carpenter
A road by user may be defined, ascertained & recorded Sec 4762 Stat of 01.
Petition must
Must describe route
Must give name of owners of land
Must show user
Need not state qualification of petitioners. 103-48
Must show that the road has not been ascertained and recorded -.
Notice must be given 148-1
Only land occupied for 20 years can be taken 102-578 103-48; 101-58; 1 N.E. 502; 4 N.E. 11
Commissioners may define width - Act of 1897 p 192 construed by the Court in 67 N.E. 673, not to authorize the Board to declare any width not used - 67 N.E. 673
Act of 1897 does not repeal

act of 1867; nor authorize
commissioners to define
width of road by user
67 N.E 673 McCreery vs Talley
Act of 1897 applies to
roads 30 ft wide or
wider 67 N.E 673

Cedar Creek Ditch
5 Mile drain act Sec. 5690
Viewers may require payment of money instead of allotting work. Sec 5656 p 52 top.
Exceptions may be filed to the report by party on two grounds. Apportionment or Damages. Sec 5695
Party may appeal on 4 Sec 5695
Ditch is in "fieri" until completed 152 — 89 a
Commissioners have power to construct ditch &
Land owner may be estopped from objecting — 142 — 116
143 — 367; 48 N.E. 635

Only the exceptions in Statute can be considered on appeal 142 — 125
Remedy by writ of 143 — 347

Jurisdiction of Exception, once acquired is final 79 — 10 & 116 bottom
77 — 37; 37 & 37 bottom
102 — 23; bottom
If court has jurisdiction to start with, subsequent acts does not oust — 90 — 122; 93 — 365 365 middle
106 — 101 whole case; 24-325 ditch through city 37 NE 247

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